



NEWS

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SUMMARY OF CASES ACCEPTED DURING THE WEEK OF MAY 13, 2002

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#02-80 People v. Barragan, S105734. (D036697; unpublished opinion.) Petition for review after the Court of Appeal reversed and remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue: Do the doctrines of res judicata or law of the case bar retrial of prior conviction allegations after a reversal on appeal for insufficient evidence?

#02-81 Borisoff v. Taylor & Faust, S105600. (A093450, A094395; 96 Cal.App.4th 418.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Can the special administrator of an estate bring an action for legal malpractice against an attorney retained by a prior administrator?

#02-82 People v. Cavitt, S105058. (A081492, A088117; unpublished opinion.) Petition for review after the Court of Appeal affirmed judgments of conviction of criminal offenses. The court limited review to the following issues: (1) Is an accomplice liable for first degree murder under the felony-murder rule whenever a killing is committed while the accomplice and the actual killer are jointly engaged in a felony implicating the felony-murder rule, or is an accomplice liable only where the killing is committed in furtherance of a common purpose or design to commit the underlying

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felony? (See People v. Pulido (1997) 15 Cal.4th 713, 721-722 & fn. 2.) (2) Does the principle terminating liability under the felony-murder rule when the perpetrators of the underlying felony have attained a place of temporary safety apply where only some perpetrators have reached such a place and the killing is thereafter committed by a perpetrator who has not reached a place of temporary safety? (3) Did the trial court prejudicially err in precluding defendants from presenting evidence establishing that a cohort harbored independent animus for purposes of first-degree felony murder?

#02-83 People v. Flores, S105762. (B148379; 96 Cal.App.4th 1081.) Petition for review after the Court of Appeal remanded for hearing in to ability to pay costs of defense, and otherwise affirmed a judgment of conviction of a criminal offense. This case presents the following issue: When a trial court orders defendant to pay for the costs of representation by appointed counsel without holding a noticed hearing required by Penal Code section 987.8, subdivision (b), may the Court of Appeal remand for such a hearing after expiration of the six-month period specified in the statute or must the order to pay costs simply be stricken?

#02-84 Gavaldon v. DaimlerChrysler Corp., S104777. (G026626, G027036; 95 Cal.App.4th 544.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Is a service contract, purchased to supplement the factory warranty accompanying the purchase of a new automobile, an express warranty within the meaning of the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.), entitling the purchaser to the replacement or restitution remedy of Civil Code section 1793.2, subdivision (d), if satisfactory repairs cannot be made after a reasonable number of attempts?

#02-85 People v. Hernandez, S105271. (B145238; 95 Cal.App.4th 1346.) Petition for review after the Court of Appeal reversed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Did the trial court err in discharging a juror during trial? (2) If so, was the error prejudicial? (3) If so, is retrial barred by the double jeopardy provisions of the federal and state Constitutions?

#02-86 Mulder v. Pilot Air Freight, S105483. (B146633; unpublished opinion.) Petition for review after the Court of Appeal affirmed in part and reversed in part the

judgment in a civil action. This case presents the following issue: Is the privilege for reporting suspected criminal activity to a police officer (Civ. Code. § 47(b)) absolute or does it apply only to statements made in good faith?

#02-87 Palmer v. GTE California, Inc., S104997. (B133517; unpublished opinion.) Petition for review after the Court of Appeal reversed a judgment notwithstanding the verdict and an order granting a new trial in a civil action. This case presents the following issue: Does a party's personal service of a file-stamped copy of the judgment constitute written notice of entry of judgment under Code of Civil Procedure sections 659 and 660 for the purpose of determining the time to file post-judgment motions and the time within which the trial court is required to rule on such motions?

#02-88 Richmond v. Shasta Community Service Dist., S105078. (C034239; 95 Cal.App.4th 1227.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Are the water connection and fire suppression fees at issue in this case special assessments subject to the voter approval requirements of article XIII D of the California Constitution, or development fees exempt from those requirements? (2) Can exempt development fees be adopted by resolution, or only by local ordinance?

#02-89 Barnes v. Superior Court, S105771. (B152112; 96 Cal.App.4th 631) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. The court ordered briefing deferred pending decision in People v. Superior Court (Jimenez), S099542 (#01-126), which includes the following issue: When the prosecution refiles criminal charges following the grant of a motion to suppress evidence and the dismissal of the initial charges, does Penal Code section 1538.5, subdivision (p), which provides that relitigation of the motion to suppress evidence "shall be heard by the same judge who granted the motion at the first hearing if the judge is available," limit the right of the prosecution to exercise a peremptory challenge to a judge or magistrate under Code of Civil Procedure section 170.6?

#02-90 Bechtel Petroleum Operations, Inc. v. Continental Ins. Co., S105776. (B140133; 96 Cal.App.4th 571, mod. 97 Cal.App.4th 469a.) Petition for review after the

Court of Appeal affirmed the summary judgment in a civil action. The court ordered briefing deferred pending decision in MacKinnon v. Truck Ins. Exchange, S104543 (#02-72), which includes the following issue: Does the “pollution exclusion” provision of a commercial comprehensive general liability policy apply to, and support an insurer’s refusal to defend, a wrongful death action filed against the insured to recover damages for personal injury allegedly caused by the intentional spraying of a pesticide?

#02-91 People v. Ranger Ins. Co., S105702. (H022655; 96 Cal.App.4th 818.)

Petition for review after the Court of Appeal affirmed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case. The court ordered briefing deferred pending decision in People v. Ranger Ins. Co., S103451 (#02-44), and People v. Seneca Ins. Co., S104487 (#02-45), which present the following issue: Are the requirements of Penal Code section 1166, specifying the findings a trial court must make before releasing a convicted defendant on bail prior to sentencing, applicable where the defendant pleads guilty or no contest or only where the defendant is convicted on a verdict of guilty?

DISPOSITIONS

The following cases were dismissed and remanded to the Court of Appeal:

#02-03 People v. Abasta, S102143.

#01-110 Bravo v. Superior Court, S099376.

#02-35 People v. Simmons, S103452.

#02-36 Williams v. Superior Court, S103439.